IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1477 OF 1988.

M/s.Devi Dayal Metal Industries)
Pvt.Ltd., a registered private)
limited company under Companies)
Act, havign its office at Atur)
House, 2nd floor, 87, Dr.Annie)
Besant Road, Worli, Bombay 400018.) .... Appellant.

Versus.

1. Jamshed Kanga,)
Municipal Commissioner,)
having his office at Municipal)
Head Office, Bori Bunder,)
Bombay.

2. Municipal Corporation of)
Greater Bombay, having its)
office at Municipal Building)
Annexe, Mahapalika Marg,)
Bori Bunder Bombay 400 001.) .... Respondents.

Shri S.B,Rathore for the Appellant.

Shri N.V.Walawalkar, Senior Counsel with Shri J.J. Xavier for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 29th March, 2006.

ORAL JUDGMENT.

1. The submissions of the learned Counsel appearing for the parties were heard on the last date. An appeal was preferred by the Appellant under section 217 of the Bombay Municipal Corporation Act, 1888 (hereinafter referred to as "the said Act of 1888") for challenging

the assessment of rateable value. The Appeal was filed in the Court of Small Causes at Mumbai. By the impugned Judgment and Order, the said Appeal has been dismissed.

2. The Respondent-Corporation served a special assessment notice in respect of the property owned by the Appellant proposing to enhance rateable value from Rs.27,620/- NPA to Rs.5,71,380/- NPA with effect from 1st April 1981. Being aggrieved by the said order, a complaint was filed by the Appellant. The said complaint was investigated and disposed of by the Assistant Assessor and Collector of the Respondent-Corporation by order dated 24th July 1985. By the said order the rateable value of the property was fixed at Rs.1,37,375/- NPA.

3. The learned Additional Chief Judge of the Court of Small Causes dismissed the Appeal preferred by the Appellant. The learned Judge found that the rateable value was required to be varied on account of the major changes brought about by the Appellant to the premises in question and the premises are allowed to be used by M/s.Minerals and Metals Trading Corporation of India Ltd. at the rate of Rs.80/- per 10 sq.meters.

4. The learned Counsel appearing for the Appellant

submitted that there was no reason whatsoever for the alteration in the rateable value of the premises. He submitted that there are no alterations or additions or improvement made in the premises, which are the subject matter of assessment and therefore, the order passed by the Investigating Officer is illegal. He submitted that the amount paid by M/s.M.M.T.C. to the Appellant was certainly not a ground for enhancement of the rateable value. He placed reliance on the decision of the Division Bench of the Gujarat High Court reported in AIR 2002 Gujarat page 379 (Ahmedabad Municipal Corporation v/s. Vireshchand Chandrakant Desai) in support of his case.

5. Shri Walawalkar, the learned Senior Counsel appearing for the Respondents pointed out that the occasion arose for revision of the rateable value on account of the major improvements made by the Appellant in the property in question. He submitted that even the user of the property has been changed. He submitted that even if test of standard rent under the Rent Control Legislation is adopted, the standard rent must undergo a change as a consequence of the improvements made to the property and the change of user by the assessee. He placed reliance on the decision of the Apex Court reported in 1970 Mah.L.J. page 866

(Filmistan Pvt.Ltd. v/s. Municipal Commissioner for Greater Bombay). He also placed reliance on another decision of the Apex Court reported in AIR 1968 SC 425 (Municipal Corporation of Greater Mumbai v/s. Royal Western India Turf Club Ltd.). He submitted that in view of the findings recorded by the learned Judge of the Small Causes Court no interference is called for.

6. I have considered the submissions. It cannot be disputed that the Respondent No.2-Corporation has a power under the said Act of 1888 to alter the rateable value. Reference will have to be made to the decision of the Gujarat High Court in the case of Ahmedabad Municipal Corporation (supra) relied upon by the Appellant. Even in the said decision the Division Bench of the Gujarat High Court has accepted the power of the Municipal authorities to increase the rateable value in case of a change in the property or in case where a change of user is effected.

7. The initial burden is on the Appellant to establish that the assessment of rateable value made by the Investigating Officer is erroneous. It will be necessary to refer to the Memorandum of Appeal filed by the Appellant under section 217 of the said Act of 1888.

In ground (d) the Appellant has stated thus:

(d) The Appellants submit that the property in question is an old building constructed about 25 years back, **wherein they had spent good sum of money by way of repairs to make it suitable for warehousing purposes.** As such the property being old one, it ought to have been assessed at original rate of Rs.16/- per 10 sq.meters when it was owner occupied for their factory use. **However due to strike and labour trouble, they had to close down their original business and to switch over to warehousing agency business with their Principal M/s.Mineral & Metal Trading Corporation of India Ltd. of Express Building at 10 Bahadur Shah Zafar Marg, New Delhi with zonal offices inter alia at Bombay.** The Appellants crave leave to refer to and rely upon the various copies of the Warehousing Agency Agreements entered into by and between themselves and said Mineral and Metal Trading Corporation of India Ltd. as and when necessary for its true meaning and interpretation. The Appellants therefore submit that the property in question ought to have been assessed at the original rate of rent when the property was first assessed by the Respondent-Corporation and

not on the basis of the actual warehousing charges under the Warehousing Agreement dated 1st January 1984." (Emphasis supplied).

Thus the Appellant came out with a case that they had closed down their original business due to strike and thereafter the Appellant switched over to warehousing business with the principal M/s.Minerals and Metals Trading Corporation of India Ltd. In the Memorandum of Appeal a reference is made to the warehousing agreement executed by and between the Appellant and M/s.Minerals and Metals Trading Corporation of India Ltd.

8. In this connection it will be necessary to refer to the evidence of Shri Sushilkumar Gopaldas Agarwal, the Managing Director of the Appellant. He stated in his examination-in-chief that the grounds stated in the Memorandum of Appeal were true and correct. He stated that the property in Appeal should have been assessed as it was prior to 1980 as there is no change effected in the premises subject matter of Appeal. In the cross-examination, the Managing Director of the Appellant has admitted that in December 1978 the the Appellant stopped manufacturing activities in the property subject matter of the Appeal and thereafter the Appellant got the agency from M/s.MMTC. He has further

admitted that while giving warehousing facility to M/s.MMTC, the facilities like telephone, watchman, compound light, special type of forklift, weigh-bridge etc. have been provided by the Appellant.

9. As pointed out earlier, in the Memorandum of Appeal it is stated that the Appellant had spent large amount of money by way of repairs on the property in appeal in order to make it suitable for warehousing purposes. Thus from the averments made in the Memorandum of Appeal and from the evidence led by the Appellant, it is clear that not only that there was a change of user brought about by the Appellant but even the property has underwent change by spending a large amount for making the property suitable for warehousing. It is also an admitted position that facilities like weigh-bridge were provided in the property for the purpose of the warehousing business.

10. It will be necessary to refer to the decision of the Apex Court in the case of Filmistan Pvt.Ltd. (supra). In paragraph 18 of the said decision, the Apex Court observed thus:

> "18. **It is necessary to clarify that the agreed rent could, in conceivable cases,**

> **constitute a true measure of the standard rent.** For example, the circumstance that a particular tenant has paid a particular amount of rent over a long course of years without resorting to the valuable remedy of having the standard rent fixed would be a relevant circumstance to be taken into consideration for the purpose of seeing what is the standard rent of the premises. The error into which the learned Judge has fallen is that he assumed that in the instant case the agreed rent was the measure of the standard rent. No such assumption can be made because what is the standard rent of the particular premises is an issue which has to be decided like any other issue of fact."
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> (Emphasis supplied.)

It will be necessary to refer to the findings recorded by the lower Appellate Court. The Appellate Court has noted the change of user and the improvements carried out by the Appellant to the property in appeal. The Appellate Court observed that the Appellant has not adduced evidence of an expert as regards the hypothetical rent which the property will fetch. In the absence of any evidence, the Appellate Court came to the conclusion that the Investigating officer was justified

in adopting the rent at Rs.80/- per 10 sq.meter on the basis of the transaction entered into by the Appellant with M/s.MMTC.

11. As held by the Apex Court in the case of Royal Western India Turf Club Ltd. (supra) section 154 of the said Act provides only for determination of annual rent and it does not lay down any particular method of computing the rateable value. It has been held that even profit basis method can be used for determining the rateable value.

12. In view of the evidence led by the Appellant and the material on record, I find no fault with the view taken by the learned Judge of the Small Causes Court. There is no merit in the Appeal. The Appeal is dismissed with no order as to costs.

Judge.